

BUREAU OF INDIAN AFFAIRS OFFICE OF TRIBAL SERVICES

GUIDANCE FOR CONTRACT SUPPORT COSTS (Public Law 93-638, as Amended)

NOTE: This document includes instructional guidance in regard to PREAWARD and STARTUP Costs.

CONTRACT SUPPORT COSTS

Public Law 93-638, The Indian Self-Determination and Education Assistance Act of 1975 (25 USC 450, et seq; 88 Stat. 2203), as amended (Act), establishes the term CONTRACT SUPPORT COSTS.

The Act in Section 106(a)(2) and (3)(A) provides as follows:

- Section 106(a)(2) of the Act defines CONTRACT SUPPORT COSTS:

“There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which:

- (A) *normally are not carried on by the Secretary in his direct operation of the program; or,*
- (B) *are provided by the Secretary in support of the contracted program from sources other than those under contract.”*

- Section 106(a)(3)(A) identifies the types of costs that are considered CONTRACT SUPPORT COSTS:

“The contract support costs that are eligible for the purposes of receiving funding under this Act shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of:

- (i) *direct program expenses for the operation of the Federal program that is the subject of the contract; and*
- (ii) *any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract, except that such funding shall not duplicate any funding provided under section 106(a)(1).”*

It is the policy of the Bureau of Indian Affairs to reimburse a tribal contractor for reasonable, allowable, and allocable CONTRACT SUPPORT COSTS as defined in section 106(a)(2) and identified in section 106(a)(3)(A) of Public Law 93-638, as amended, incurred by the tribal organization as a result of contracting with the Bureau of Indian Affairs.

CONTRACT SUPPORT COSTS include all reasonable, allowable, and allocable direct and indirect costs. The Bureau provides a level of funding, identified as the Secretarial Funding Level (Section 106(a)(1) of

the Act), for the operation of the contracted program. These are DIRECT COSTS and they are provided from the PROGRAM FUNDS identified for the contracted program. The Bureau also provides a level of funding to meet the administrative or other expense related to overhead incurred by the tribal contractor in connection with the contracted program. These are INDIRECT COSTS, they are provided from the CONTRACT SUPPORT FUND (CSF) and added to the PROGRAM FUNDS under the contract.

In addition, CONTRACT SUPPORT COSTS include two (2) other aspects of direct cost that come into play when a program is being contracted for the first time, these are STARTUP COSTS and PREAWARD COSTS. The nature and extent of these costs must be identified in writing, and their reasonableness, allowability, and allocability must be determined and agreed to through negotiation, prior to their incurrence. STARTUP COSTS shall be provided from the available PROGRAM FUNDS or from the INDIAN SELF-DETERMINATION FUND (ISDF). PREAWARD COSTS shall be provided from the available PROGRAM FUNDS.

The INDIAN SELF-DETERMINATION FUND (ISDF) is an off-shoot of the CSF. It was established to provide a separate source of funds to address the CSF (Indirect Cost) need of "NEW" and "EXPANDED" contracts and STARTUP COSTS. ISDF funds are limited, and are provided on a first come first served basis until the ISDF is depleted. The amount and magnitude of the requests for ISDF is increasing, while the amount of ISDF provided on a yearly basis has remained constant. Therefore, to ensure that all tribal contractors are afforded the opportunity to access the ISDF to meet the INDIRECT COST need for "NEW" and "EXPANDED" contracts and STARTUP COSTS, steps must be taken to identify the type of costs that will be allowed as STARTUP COSTS for purposes of access to the ISDF. All other "startup" type costs are recoverable from the available PROGRAM FUNDS.

PRE-AWARD AND START-UP COSTS

The Act in Section 106(a)(5) and (6) provides as follows:

- Section 106(a)(5) of the Act defines the term STARTUP COST.

"Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary:

(A) *to plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and,*

(B) *to ensure compliance with the terms of the contract and prudent management."*

- Section 106(a)(6) of the Act establishes PREAWARD COSTS as allowable costs, and prescribes the procedure to be followed for consideration of PREAWARD and STARTUP COSTS:

"Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive a written notification of the nature and extent of the costs prior to the date on which such costs are incurred."

These CONTRACT SUPPORT COSTS are DIRECT COSTS which normally are incurred when a program, function, service, or activity is contracted for the first time. STARTUP COSTS and PREAWARD COSTS are incurred in the planning, proposal preparation, and program implementation aspect of the contracting process. To be allowable, the nature and extent of these costs must be provided in writing, and negotiated and agreed to prior to their incurrence.

- PREAWARD COSTS: Costs incurred prior to the effective date of the self-determination contract, whether or not they would have been allowable under the contract if incurred after the effective date of the contract, when specifically provided for in the contractual agreement.

Subject to negotiation and mutual agreement PREAWARD COSTS may include:

- Direct Costs incurred for the direct operation of the contracted program prior to actual

contract award.

- The amount and extent of these costs shall be negotiated and agreed to in writing prior to their incurrence.

The reasonable, allowable, and allocable PREAWARD COSTS agreed to shall be provided from the PROGRAM FUNDS available for the program, function, service, or activity which is the subject of the contract.

- **STARTUP COSTS:** The reasonable, allowable, and allocable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary to plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and to ensure compliance with the terms of the contract and prudent management.

It is not possible to provide an all inclusive listing of the types of costs that would be allowable as STARTUP COSTS. In general, STARTUP COSTS are those reasonable, allowable, and allocable costs incurred on a one-time basis necessary to put in place and begin operation of a new or expanded program, function, service, or activity. These costs will vary from program to program, therefore they are subject to negotiation and agreement prior to their incurrence.

Subject to negotiation and mutual agreement STARTUP COSTS may include:

- Documented costs of contract proposal preparation.

NOTE: Documentation of time spent will be required to support the request for funding.

- Costs incurred to advertise for staff under the initial contract.

NOTE: Documentation will be required to support the request. The cost of personnel (i.e. salaries and wages) is an on-going and continuing cost to the program and, therefore, is not a STARTUP COST.

- Costs incurred to establish the program. (If not provided by the Bureau.)

- Obtain office space for the contracted program.

- ▶ Lease, Rental Agreement.

NOTE: This is the cost of preparation and negotiation of the lease or rental agreement, not payment of the lease or rental amount. The lease or rental amount is an on-going, or direct, cost under the contract.

- Office Equipment.

- ▶ Desks, tables, chairs, etc.
- ▶ File Cabinets.
- ▶ Typewriters, calculators, etc.
- ▶ Computers (Hardware and Software).

NOTE: When a Bureau of Indian Affairs program, function, service, or activity is contracted, the Bureau may make available to the contractor some, if not all, of the property (including where appropriate vehicles and/or machinery) used by the Bureau in its operation of the program, function, service, or activity. Should the contractor choose not to accept the offered property, acquisition of replacement property (including where appropriate vehicles and/or machinery) by the contractor shall not be considered a STARTUP COST.

STARTUP COSTS do not include:

- Costs of Personnel (Salaries and Wages).

- Bonding and personal liability insurance costs.
- Tribal Council/Staff Development (training, to include travel costs).
- Office Supplies and Materials (these are on-going or necessary costs of program operation, they are direct program costs).
- Acquisition of vehicles (to include police vehicles, vans, buses, etc.), trucks (to include fire trucks, dump trucks, tractors, etc.), and items considered heavy equipment (to include road graders, front-end loaders, bulldozers, back hoes, etc.).
- Accident and liability insurance coverage for vehicles, trucks, and heavy equipment.
- Facility Construction, Renovation or Repair.
- Direct Program Operational Costs (to include items such as cost of service delivery, utilities, building and grounds maintenance, telecommunications systems and computer systems maintenance and upgrade, etc.).

NOTE: Costs, negotiated and agreed prior to their incurrence, to begin program operation prior to award of the contract (PREAWARD COSTS).

REASONABLE, ALLOWABLE AND ALLOCABLE COSTS

Before an item of cost can be accepted it must be subjected to a review to determine if it is REASONABLE, ALLOWABLE, and ALLOCABLE. Additional and more detailed guidance can be found in Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, and its implementing Guide ASMB C-10, Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Agreements with the Federal Government.

This review is accomplished in the following manner:

- **REASONABLE:** The concern is whether the cost is necessary and reasonable for proper and efficient performance and administration of the program, function, service, or activity which is the subject of the contract. In general, a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

Items to consider:

- Is the cost of a type generally recognized as ordinary and necessary for the operation of the program, function, service, or activity or the performance of the contract.
- Market prices for comparable goods or services.
- Did the individuals involved act with prudence in the circumstances, considering their responsibilities to the tribal organization and under the contract.
- Were there significant deviations from established practices of the tribal organization which may unjustifiably increase the cost to the contract.

Example: A tribal contractor enters into a self-determination contract for a program for which the Bureau has available \$100,000 in program funds. In its proposal, the tribal contractor submits a budget request for \$300,000 in Start-Up Costs. This is not reasonable. Start-Up Costs are Direct Costs, incurred on a one-time basis, and should be funded from the available program funds. However, the Bureau has access to a separate pool of funds called the Indian Self-Determination Fund (ISDF) through which to provide the funds needed for Start-Up Costs to enable the tribal contractor not to have to unreasonably reduce services to provide for Start-Up Costs.

- **ALLOWABLE:** The concern is whether the cost is an allowable cost to the program, function, service, or activity under the contract.

Items to consider:

- Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments provides guidance as to costs that are generally allowable, allowable with approval of the funding source, and unallowable.
- Public Law 93-638, as amended, section 106(k) provides a listing of twelve (12) items of cost that are considered allowable costs under self-determination contracts.
- Is the cost consistent with policies and procedures of the contractor.
- Is the item of cost adequately documented.
- **ALLOCABLE:** The concern is whether the cost is appropriate under the contract in question. In general, a cost is allocable if the goods and services being acquired are chargeable or assignable to the program, function, service, or activity under the contract.

Items to consider:

- The existing contract budget.
- The contract proposal.